



UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

J.C., a person with a disability, S.F., a
person with a disability, and J.M., a
person with a disability,

Plaintiffs,

v.

FELIX P. CAMACHO, in his official
capacity as Governor of Guam,

ROSEANNE ADA, in her official
capacity as Director of the Department of
Integrated Services for Individuals with
Disabilities, and

J. PETER ROBERTO, in his official
capacity as Director of the Department of
Mental Health and Substance Abuse,

Defendants.

No. CV 01-00041

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The matter before the Court, the Honorable Consuelo B. Marshall, District Judge, presiding, is the Court trial in this action for declaratory and injunctive relief in which Plaintiffs claim that Defendants, Felix P. Camacho, in his official capacity as Governor of Guam, Roseanne Ada, in her official capacity as Director of the Department of Integrated Services for Individuals with Disabilities ("DISID"), and J. Peter Roberto, in his official capacity as Director of the

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1 Department of Mental Health and Substance Abuse ("DMHSA") have violated
2 their rights guaranteed by the 14th Amendment of the United States Constitution,
3 Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the
4 Rehabilitation Act of 1973. Plaintiffs' claims are based upon an alleged failure
5 of Defendants to provide appropriate community-based living services to
6 Plaintiffs.

7 Plaintiffs sought and obtained preliminary injunctive relief on November 6,
8 2001.

9 A Court trial was held before the Court on March 9, 10, and 11, 2004.
10 Upon consideration of the testimony and documentary evidence received in this
11 case, the Court's evaluation of the demeanor and credibility of the witnesses, and
12 the Proposed Findings of Fact and Conclusions of Law submitted by the Parties,
13 the Court issued findings on the record in the presence of the parties on March 16,
14 2004. The Court now makes the following supplemental findings:

15 **I. FINDINGS OF FACT**

16 1. Defendant Felix P. Camacho is the Governor and Chief Executive Officer of
17 Guam. Defendant Roseanne Ada is the Director of DISID, an agency of the
18 Government of Guam which exists to ensure the provision of an array of
19 appropriate services and care to individuals with disabilities, including the
20 development and provision of service programs in the public or private sector for
21 persons with disabilities; the establishment of a continuum of comprehensive
22 services and residential alternatives in the community so as to allow individuals
23 with disabilities to live in the least restrictive environment. Defendant J. Peter
24 Roberto is the Director of DMHSA, an agency of the Government of Guam,
25 pursuant to Guam statute, DMHSA provides services which include partial
26 hospitalization and aftercare services to include transitional homes for the
27 mentally ill, and inpatient services including, but not limited to, acute psychiatric

1 and alcohol and drug detoxification services.

2 2. Plaintiff J.C. is an individual with a disability under the ADA. He is a forty-
3 one year old male who has been diagnosed with mental retardation and psychosis
4 NOS (not otherwise specified. He was first admitted to the Adult Inpatient Unit
5 ("AIU") of the DMHSA on or about November 19, 1999 and discharged on
6 December 6, 1999. Plaintiff J.C. was re-admitted to the AIU on September 19,
7 2000. Plaintiff J.C. currently resides at the AIU.

8 3. Plaintiff S.F. is an individual with a disability under the ADA. He is a
9 seventy year old male who has been diagnosed as having dementia with behavioral
10 disturbance and alcohol dependance. S.F. was first admitted to the AIU on July
11 10, 2000 on a sevety-two hour hold. On July 13, 2000, Plaintiff S.F. was re-
12 admitted to the AIU. On August 5, 2001, Plaintiff S.F. was placed at Guma
13 Hinemlo, a permanant supportive housing program operated by Guma Mami under
14 contract by DMHSA, with funds provided through the Guam Housing and Urban
15 Renewal Authority ("GHURA") Continuum of Care Housing and Urban
16 Development ("HUD") program.

17 4. Plaintiff J.M. is an individual with a disability under the ADA. He is a
18 twenty-five year old male who has been diagnosed with autism, bipolar disorder,
19 and moderate mental retardation. J.M. was placed by the Department of Education
20 ("DOE") in September 1987 at the Boston Higashi School because there was no
21 facility or program on Guam appropriate to meet J.M.'s needs. He was returned to
22 Guam in April 2000 because DOE was no longer obligated to provide for Plaintiff
23 J.M.'s care. J.M. has been a client of DISID since July 19, 1999. He was admitted
24 to the AIU on April 26, 2000 and since his admission, J.M. has resided
25 continuously in a seclusion room at the AIU and J.M.'s meals and bed were and
26 are provided by his family.

27 5. On one or more occassions, treating psychiatrists of J.C., S.F., and J.M., and
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1 each of them, including, but not necessarily limited to Drs. Joan Gill, Claire Ashe,
2 William Hctor, have recommended that individual Plaintiffs J.C., S.F., and J.M.
3 be placed in a community-based residential facility appropriate to their individual
4 needs and circumstances. On one or more occasions, the treating psychiatrists of
5 Plaintiffs J.C., S.F., and J.M., have stated that individual Plaintiffs J.C., S.F., and
6 J.M. would benefit from receiving one or more of the following: occupational
7 therapy, speech therapy, vocational therapy, recreational therapy, behavioral
8 therapy, and brief passes home.

9 6. Neither Plaintiffs object to residing in a community-based residential
10 treatment facility.

11 7. The AIU is a 24-hour locked facility with sixteen beds for patients.
12 Residents of the AIU include Plaintiffs, individuals found not guilty of crimes by
13 reason of mental defect, and other patients whose mental illness requires
14 institutionalization.

15 8. According to Defendant Roberto, approximately \$1.9 million is the
16 personnel cost for the AIU staff for one year, consisting of staff nurses and
17 technicians. The average staffing cost per bed is \$118,750 (taking 1.9 million
18 dollars and dividing it by the 16 patient beds), This amount does not include the
19 psychiatrist(s) contract or other expenses related to the operations of the AIU.

20 9. According to Plaintiff J.C.'s DMHSA treatment records, Plaintiff J.C. has
21 walked off the AIU, a locked ward, on two (2) occasions being returned to the
22 AIU both times by the police; has been placed in two-point restraints and in a
23 locked seclusion room for physical aggression, pounding on walls, and not
24 responding to redirection; fell on the floor and lacerated his chin, with abrasions to
25 his left leg, while in ambulatory restraints. Plaintiff J.C. received treatment some
26 seven (7) hours later at the Guam Memorial Emergency Room, with five (5)
27 stitches to his chin. Plaintiff J.C. has been bitten twice by other clients and has
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1 been placed in locked seclusion on at least two (2) occasions without doctor's
2 orders. Plaintiff J.C. has been sexually abused by another male client.

3 10. Plaintiffs' treating psychiatrists and Defendants Roberto and Ada,
4 expressed that the AIU is an inappropriate placement for Plaintiffs. In addition,
5 Plaintiffs' expert witnesses have expressed Plaintiffs J.C. and J.M. have
6 experienced and are at risk of further deterioration or regression as a result of
7 placement and/or continued placement at the AIU.

8 11. Plaintiffs J.C. and J.M. receive little or no formal education or therapy at
9 the AIU. Expert witnesses testified on behalf of Plaintiffs that both J.C. and J.M.
10 would benefit from receiving one or more of the following: occupational therapy,
11 speech therapy, vocational therapy, recreational therapy, and brief passes home.
12 These services are not available to Plaintiffs at DMHSA's AIU.

13 12. Plaintiffs' experts testified that the planning of treatment and
14 interventions for Plaintiffs while at the DMHSA substantially departs from the
15 generally accepted minimum standards of care. Plaintiffs' experts testified that
16 DMHSA does not recognize that adequate treatment requires and required that the
17 Defendants' conduct an initial "work up" of the Plaintiffs, formulate an accurate
18 diagnosis with input by all of the disciplines involved in the Plaintiffs treatment,
19 and develop an individualized plan to build on strengths, interests, preferences and
20 goals. Plaintiffs J.C. and J.M. case files contain documents entitled "case
21 summary" and "treatment plan." Plaintiffs' experts found these to bear no
22 resemblance to a comprehensive integrated plan for the provision of treatment
23 addressing the individual needs of the Plaintiffs. In fact, both provided the same
24 treatment: continued medication and placement outside of the AIU. No goals for
25 treatment other than those mentioned (medication and placement) were or
26 currently are in place for Plaintiffs. Plaintiffs' expert found DMHSA substantially
27 departed from the generally accepted minimum standards of care by failing to
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1 conduct: a) a complete medical evaluation to rule out or make conclusive findings
2 regarding possible biological causes of Plaintiffs' psychological, behavioral, or
3 cognitive difficulties; b) a psychiatric evaluation of Plaintiffs and, if indicated, a
4 psychological evaluation of Plaintiffs; c) a developmental history of Plaintiffs; d) a
5 comprehensive psycho-social history of Plaintiffs; e) an occupational therapy
6 evaluation; f) a dietary needs/therapy evaluation; g) a recreational therapy
7 evaluation; h) an Art and Music therapy evaluation; i) proper documentation of
8 direct observation of the Plaintiffs; j) a treatment team consisting of, at a
9 minimum, the treating psychiatrist, a nurse representative, a social worker,
10 representatives from ancillary services and other agencies providing care or
11 treatment to Plaintiffs on a weekly basis; and k) the development of a treatment
12 plan within seventy-two (72) hours of initial placement in the AIU, to include, but
13 not limited to, discharge planning and a behavioral plan as indicated.

14 13. Caridad II and the Mary Clare Home and Independent Group Home are
15 programs operated by, or under contract with the Defendants, which provide, or
16 are designed to provide and are mandated to provide community-based services
17 that the Plaintiffs seek in the present lawsuit. Since the filing of the lawsuit,
18 Defendants or non-profit organizations have obtained grants to expand
19 community-based treatment services available to Plaintiffs. DMHSA, through
20 federal funding and under contract for operations with Guma Mami, opened the
21 Guma Hinemolo, a long-term care program for individuals with chronic mental
22 illness. A second program, Guma Inayek, intended to provide community-based
23 treatment services to individuals dually diagnosed with mental illness and mental
24 retardation, like Plaintiffs J.C. and J.M, was funded through both federal and local
25 funding to Guma Mami, a private non-profit. Unfortunately, due to a failure to
26 timely secure facilities the program was not completed.

27 14. Guma Mami operates two (2) residential community-based treatment
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1 facilities: the Independent Group Home ("IGH") and the Mary Clare Home. Each
2 home may serve up to five (5) consumers. Guma Mami's residents receive public
3 assistance for housing and utilities from Guam Housing and Urban Renewal
4 Authority ("GHURA") and at least 75% of the homes' food costs are paid through
5 other public funds. DISID contracted with Guma Mami for the placement of up to
6 five (5) individuals in each home. DISID pays \$270,000 for placement at IGH and
7 \$291,000 for the Mary Clare Home. The approximate cost of care per person for
8 each home is \$60,000 per annum. Both IGH and the Mary Clare Home are filled
9 to capacity.

10 15. While Defendants have asserted undue financial hardship, Defendants
11 presented no evidence that resources are not available. To the contrary,
12 Defendants testified that funding was assured by Defendant, Governor Camacho,
13 and from Guam's Health and Human legislative committee chairperson, Senator
14 Lou Leon Guerrero. Additionally, Defendant Ada testified that money received by
15 the Guam Department of Public Health and Social Services under the federal
16 government's Real Choices grant in an amount exceeding \$600,000 could be used
17 for services for Plaintiffs. Finally, GHURA Planner Rebecca Borja, testified that
18 funds available under the federal program for homelessness, continuum of care
19 funding have been (and may be) accessed to provide services to persons similar to
20 Plaintiffs and, in fact, funding was approved with a local match obtained to open a
21 program focused on the needs of that of the Plaintiffs. Ms. Borja also testified that
22 funding for program development is also available under community development
23 block grants received by Guam and while DMHSA has accessed and received
24 funding under both of these programs, DISID has never applied.

25 16. While Defendants have asserted that they have an effective working plan
26 for placing qualified persons with mental disabilities in less restrictive settings and
27 a wait list for those services that moves at a reasonable rate, Defendants' evidence
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1 fails to sufficiently support these assertions. In fact the evidence presented to the
2 Court was that Defendants policies regarding placement and receipt of services is
3 still in the developmental stages.

4 17. The evidence presented by Defendants indicates that no one has been placed
5 from the waiting list since the creation of DISID without court order and that the
6 current purported waiting list is only a list of individuals requesting services and
7 that no priorities have been assigned to any individual contained therein.

8 Defendants themselves testify that all of the individuals who are currently in an
9 inappropriate placement are in critical need of placement elsewhere. The Court
10 finds that Defendants' purported waiting list is simply a list of persons not
11 receiving services and an individual is only taken off the list when a court order
12 requires the individual's placement elsewhere.

13 18. The Court finds that in this case Defendants have failed to take the action
14 necessary to comply with this Court's Preliminary Injunction.

15 **II. CONCLUSIONS OF LAW**

16 **A. Americans with Disabilities Act and Rehabilitation Act**

17 1. The Americans with Disabilities Act ("ADA") was enacted by Congress to
18 eliminate discrimination against persons with mental or physical disabilities. 42
19 U.S.C. § 12101 (b). Congress also determined that discrimination against
20 individuals with disabilities persisted in such areas as health services and access to
21 public services. 42 U.S.C. § 12101(a)(3).

22 2. Under the ADA, "no qualified individual with a disability shall, by reason
23 of such disability, be excluded from participation in or be denied the benefits of
24 the services, programs, or activities of a public entity, or be subjected to
25 discrimination by any such entity." 42 U.S.C. § 12132. Defendants do not dispute
26 that the Government of Guam is a "public entity" within the scope of the ADA nor
27 do they dispute that Plaintiffs are qualified individuals with a disability.

1 3. Section 12132 constitutes a “general prohibition against discrimination by
2 public agencies.” *Bay Area Addiction Research & Treatment, Inc v. City of*
3 *Antioch*, 179 F.3d 725, 731 (9th Cir. 1999). The U.S. Supreme Court has held that
4 “undue institutionalization [of mentally disabled persons] qualifies as
5 discrimination ‘by reason disability.’” *Olmstead v. Zimring*, 527 U.S. 581, 597-
6 98 (1999), The Court stated:

7 States are required to provide community-based treatment for persons
8 with mental disabilities when the State’s treatment professionals
9 determine that such placement is appropriate, the affected persons do
10 not oppose such treatment, and the placement can be reasonably
11 accommodated, taking into account the resources available to the
12 State and the needs of others with mental disabilities.

13 *Id.* at 607.

14 4. Nothing in the ADA condones termination of institutional settings for
15 persons unable to handle or benefit from community settings. Consistent with the
16 ADA, the State may rely on the assessment of its own professional in determining
17 whether an individual meets the essential eligibility requirements for habilitation
18 in a community-based program. The individual must also desire placement in a
19 community-based facility. *See Olmstead*, 527 U.S. at 602-03.

20 5. Regulations promulgated under Title II impose an affirmative duty on a
21 public entity to “make reasonable modifications in policies, practices, or
22 procedures when the modifications are necessary to avoid discrimination on the
23 basis of disability.” 28 C.F.R. § 35.130(b)(7). However, the State is not required
24 to “fundamentally alter’ the nature of its services or programs.” *Id.* The state may
25 defend a failure to place individuals in appropriate community-based facilities on
26 the basis that the Plaintiffs’ requested modifications to the State’s placement
27 system constitute a “fundamental alteration of the States’ services and programs.”

1 *Id.* at 603, *citing* 28 C.F.R. § 35.130(b)(7). If a State “were to demonstrate that it
2 had a comprehensive, effectively working plan for placing qualified persons with
3 mental disabilities in less restrictive settings, and a waiting list that moved at a
4 reasonable pace not controlled by the State’s endeavors to keep its institutions
5 fully populated, the reasonable modifications standard would be met.” *Olmstead*,
6 527 U.S. at 605-06.

7 6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794
8 prohibits discrimination on the basis of disability in federally assisted programs
9 and activities, and may not, solely by reason of his or her disability exclude an
10 individual from the participation in, be denied the benefits of, or be subjected to
11 discrimination under any program or activity receiving federal financial assistance
12 period. A program or activity means the operations of a department, agency,
13 special purpose district, or other instrumentality of a state or of a local
14 government, including each entity that distributes such assistance.

15 7. The operations of the Defendants are federally assisted programs and
16 activities covered by Section 504 of the Rehabilitation Act of 1973. The standards
17 used in determining whether Section 504 of the Rehabilitation Act of 1973 has
18 been violated are the same standards applied under Title II of the ADA.

19 8. The parties do not dispute that the Guam DISID and DMHSA are public
20 entities and that plaintiffs are individual with disabilities for ADA and Section 504
21 purposes. The parties do not dispute that the Guam treatment professionals have
22 determined that community-based treatment is appropriate for Plaintiffs; and
23 Plaintiffs do not oppose community-based treatment. Therefore, the focus of the
24 Court’s analysis of Plaintiffs’ request under *Olmstead* is whether the placement of
25 Plaintiffs can be reasonable accommodated, taking into account the resources
26 available to Guam and the needs of others with mental disabilities. *Id.* at 607.

27 9. Defendants testimony supports that Plaintiffs can reasonably be provided
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1 community-based treatment with resources currently available to Guam, or which
2 may be applied for through federal funding sources.

3 10. Defendants have failed to show that Plaintiffs' placement in a community-
4 based treatment center would fundamentally alter Guam's provision of services to
5 persons with mental impairments. Guam provides services to individuals similar
6 to Plaintiffs both on Guam and off island and current plans are underway to
7 expand on-island services for dual diagnosis individuals similar to Plaintiffs.

8 11. Defendants have failed to show that they have an *effective* working plan in
9 place for placement of Plaintiffs, and other individuals inappropriately placed in
10 the AIU, pursuant to *Olmstead*. Defendants have not demonstrated that there is a
11 waiting list which moves at a reasonable pace and have not demonstrated
12 sufficient efforts for placement of qualified persons with mental disabilities in less
13 restrictive settings.

14 12. The Defendants provide an array of services to individuals with mental
15 disabilities. DISID, in particular, provides services to individuals with both
16 physical and mental disabilities. All the Defendants are mandated to provide
17 services to persons with disabilities according to their particular needs.
18 Nonetheless, the Defendants have discriminated against the Plaintiffs by requiring
19 them to reside in the locked unit of the AIU in order to receive services.
20 Furthermore, the services provided to the Plaintiffs are not appropriate to their
21 particular needs.

22 13. Because, as is evidenced in the present case, the Defendants have failed to
23 comply with the Court's Preliminary Injunction, the Court finds that there exists
24 special circumstances requiring the appointment of a special master to insure
25 compliance with the Court's orders herein. The Court's orders herein will require
26 monitoring for compliance, and the Court finds that there is a requirement that the
27 Defendants, not only place the Plaintiffs in appropriate community-based
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1 residential facilities, but also that the Defendant develop a plan to insure non-
2 discriminatory services to the Plaintiffs. Defendants' violations with respect to
3 Plaintiffs are capable of repetition until or unless a plan is developed according to
4 *Olmstead* that is an effective working plan with waiting lists for community based
5 placements, that move at a reasonable rate.

6 **B. Due Process Requirements of the Fourteenth Amendment**

7 14. An individual's constitutionally protected liberty interests require the State
8 to provide "minimally adequate or reasonable training to ensure safety and
9 freedom from undue restraint." *See Youngberg v. Romeo*, 457 U.S. 307, 319-323
10 (1982).

11 15. Residents of state-operated facilities have a right to live in reasonable
12 safety, to receive adequate health care, along with habilitation to ensure their
13 safety and freedom from unreasonable restraint, prevention regression, and
14 facilitate their ability to exercise their liberty interests. *Id.*

15 16. Plaintiffs have the constitutional right to minimally adequate habilitation in
16 a setting designed to reduce self-abuse and aggression. That means habilitation
17 which will *tend* to render unnecessary the use of chemical restraint, shackles,
18 solitary confinement, locked wards, or prolonged isolation from one's normal
19 community; and conditions of life which are normal enough to promote rather
20 than detract from one's chances of living with fewer restrictions on one's
21 movement.

22 17. Plaintiffs also have a constitutional right to habilitation which is minimally
23 adequate to *maintain* basic self-care skills. In a concurring opinion in *Youngberg*,
24 Justice Blackmun, joined by Justices Brennan and O'Connor, argued that
25 minimally adequate training includes "such training as is reasonably necessary to
26 prevent a person's pre-existing self-care skills from deteriorating...." 457 U.S. at
27 327.

1 18. Plaintiffs have established that their constitutional rights under *Youngberg*
2 have been violated by the Defendants. Specifically, the court concludes that:

3 a. The Defendants has failed to provide reasonably safe
4 conditions of confinement for Plaintiffs committed to the state
5 psychiatric hospitals.

6 b. The Plaintiffs have been subjected to unreasonable bodily
7 restraints.

8 c. The Defendants have failed to provide the Plaintiffs with
9 minimally adequate habilitation that is reasonable in light of the
10 circumstances of this case.

11 d. The Defendants have consistently failed to implement the
12 recommendations of the State's treating professionals.


13 e. The Defendants' decision to place mentally retarded persons on
14 general psychiatric wards and to seclude and mechanically restrain
15 the Plaintiffs without employing behavioral treatment programs is
16 such a substantial departure from accepted professional judgment,
17 practice and standards as to demonstrate that the decision is not a
18 function of independent professional judgment within the meaning of
19 *Youngberg*.

20 f. The Defendants' failure to fulfill the community placement
21 recommendations of the state's treating professionals is such a
22 substantial departure from accepted professional judgment, practice
23 and standards as to demonstrate that the decision is not a function of
24 independent professional judgment within the meaning of *Youngberg*.
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1 g. The Defendants have failed to provide the training necessary to
2 insure the Plaintiffs' safety and to facilitate their ability to function
3 free from bodily restraints.

4 IT IS SO ORDERED.

5 DATE: June 7, 2004


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7 **CONSUELO B. MARSHALL**
8 **UNITED STATES DISTRICT JUDGE**

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21 Notice is hereby given that this document was
22 entered on the docket on 06/08/04.
23 No separate notice of entry on the docket will
24 be issued by this Court.

25 Mary L. M. Moran
26 Clerk, District Court of Guam

27 By  06/08/04
28 Deputy Clerk Date